

23
Case 2:10-cv-10978-PJD-MJH

FILED

2010 NOV -3 P 3:01

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

U.S. DIST. COURT CLERK
EAST DIST. MICH.
FLINT

AMERICAN UNIVERSITY OF ANTIGUA,
COLLEGE OF MEDICINE, a foreign corporation,

Plaintiff,

v

CASE No.: 2:10-cv-10978-PJD-MJH
Judge Patrick J. Duggan
Magistrate Judge

STEVEN WOODWARD,

Defendant,

Defendant's Response to Plaintiff's Renewed Motion for Preliminary Injunction

Defendant's Response to Plaintiff's Renewed Motion for Preliminary Injunction

List of Exhibits:

Exhibit 1: Email from "support-en@support.gandi.net"

Exhibit 2: www.aua-vet.com home page.

Exhibit 3: Description of what was modified on or about 4/19/2010.

Exhibit 4: Docket 1

Exhibit 5: www.aua-med.com

1) If the Plaintiff, American University of Antigua, AUA, had a case they would not needed an adjournment for 60 days, as per Docket 45, page 3, letter C.

Now the Plaintiff requests another injunction due to irreparable injury, which was previously found by the Court to be not needed.

Per 4/19/2010 hearing transcripts:

Page 58, line 13, The Court "I'm not satisfied that they're false, there's your problem; not yours, his too, okay."

page 60, line 14, The Court "so there won't be a preliminary injunction and that's what you're getting in your favor."

2) The Defendant was right by reinstating their Web site on their return from overseas. The Defendant notified the Court of their return, as requested by the Court and paid respect to the Court concerning the reinstatement of www.aua-med.com.

The Court has already established the following in Docket 37, page 4 "**that it would be impossible in the time allowed to analyze the truth or falsehood of the various statements on Woodward's website, the Court suggested to Woodward the possibility of taking down his website until he returned to the country and could litigate this case".**

The Plaintiff conveniently does not provide the Court with a complete and accurate representation of the home page for www.aua-med.com.

Omitted from Exhibit A, of Docket 45-2, page 2 of 2
(This is not the official American University of Antigua, AUA, site.)

This is yet another attempt by the Plaintiff to deceive the Court.

3) The Defendants second website is a mirror site (a back-up, safe stored copy), of which was established on or about 9/23/2009, prior to the Plaintiff's filing their claims on or about 3/11/2010, Docket 1(Exhibit 4).

Exhibit 1 is the confirmation and registration of www.aua-vet.com, dated 9/23/2009.

Exhibit 2 is the homepage of the Defendant's web-site containing the words "**This is not the official American University of Antigua, AUA, site.**" and "**Under Construction**".

Exhibit 3 demonstrates that the Defendant did in fact follow the rules of the Court by stating in the required email to the Court and Plaintiff on or about 4/19/2010. "My web sites now state "Under Maintenance", PLURAL.

4) Any irreparable suffering the Plaintiff has incurred, is of their own doing.

The Plaintiff has already wrongfully destroyed the Defendant's career as a Physician and has irreparably damaged the reputation of the Defendant.

The Defendant's website was created for the purpose of expressing the Defendant's opinions and criticizing AUA, their partners, and other Caribbean medical schools in general.

The Court has already established this on 4/19/2010 page 58, line 15 The Court "**Because if I do what you're saying I should do, we may be depriving him of the right to publish correct information.**"

The court has ordered the Defendant not to make any modification to the content of the Web site and this request has been obeyed.

This obedience has cost the Defendant their Civil Rights.

An injunction would be a further and additional violation of the Defendant's Civil Rights.

5) AUA filed a lawsuit against the Defendant for defamation for writing about the sexual assault of one of their students and crimes on Antigua.

The Defendant published information that is required by laws of the United States, which were written specifically to protect students.

The Defendant references Public Law 101-542 and 20 U.S.C. 1092(f), the Clery Act.

These laws set the precedence for moral and ethical behavior of higher education institutions.

The Plaintiff on the other-hand has filed a lawsuit against the Defendant in an attempt to cover-up the truth about the sexual assault of at least one student, that was published, and supported by the Plaintiff's own counsel in Court on or about 4/19/2010 page 19, line 22 Mr. Buikema: "**An AUA student was sexually assaulted.**"

The Plaintiff is attempting to cover-up the truth for financial gain, bad for business, causing them "irreparable injury" at the expense of prospective students, plural, safety.

The Defendant has, in part, now supported their defense against the Plaintiff's Claims from Docket 1, including but not limited to, Claim: 4, 17, 21 and 54 (a),(e),(f),(g),(h),(k),(o), and (p), 37, 41, 44, 56, and 57.

The Defendant was the one doing the moral and right thing by publishing this information.

To support this further the Defendant would humbly request the Court review the following URL's:

American Tourist Murdered in Antigua 29-Year-Old San Francisco Woman Found Stabbed in Neck Near Beach Barbecue.

<http://www.cbsnews.com/stories/2010/01/26/earlyshow/main6142947.shtml>

During the time www.aua-med.com was unavailable, because of this lawsuit; one of AUA's students died according to the following article.

The real cause of death of this AUA college student may never be fully known.

<http://www.antiguaobserver.com/?p=31108>

⑥ Document 45, page 3, number 2, is yet another attempt by the Plaintiff to cover-up the truth concerning their incompetence.

That is, the admission by AUA that they have disclosed private student information flagrantly violating their own policies and contractual obligations concerning FERPA.

Instead of admitting their own errors and taking the moral and ethical path of resolving the situation; AUA instead filed a lawsuit against the Defendant for exposing AUA to the proper authorities and the students who suffer because of AUA faculty and administrations blundering.

AUA had many actions that could have resolved the situation; instead they decided to file this frivolous lawsuit, exposing AUA as it really is.

The Plaintiff's own claims from Docket 1, including but not limited to: 4, 21 and 54(a),(b)(c),(e),(f), (k), 23, 47, 48, 49, 50; demonstrate that the Plaintiff is blaming the Defendant for publishing student grades.

The truth is; AUA disclosed student grades, demonstrating that they are the cause of their own irreparable damages.

The Plaintiff violated their own FERPA policies and contractual obligations on at least three separate occasions.

(A)The Plaintiff released approximately 150 student names and associated USMLE Step I scores and Grade Point Averages.

(B)The Plaintiff disclosed the Defendant's private online testing USERNAME.

(C)The Plaintiff partners disclosed the Final Grades of about 10 students from a 5th Semester program. This disclosure also provided the proof that AUA "fixes" falsifies student grades.

The Defendant has also published on www.aua-med.com information which will demonstrate that St Joseph Mercy Oakland and AUA are responsible for the released patient information, of approximately 250 patients, which is also protected by Public Laws.

In total AUA is responsible for the disclosure and suffering of approximately 400 individuals.

7) Pure logic now proves the Defendant did indeed publish **factual** information.

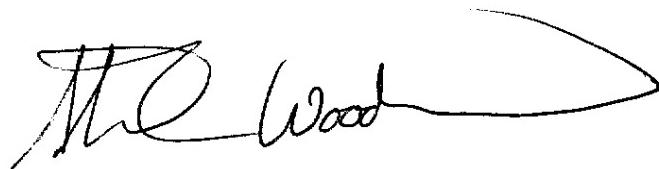
The Plaintiff admits in Docket 45, page 3, (13)(B)(2), that information was disclosed concerning student grades as **fact**.

The Plaintiff supports that www.aua-med.com and the Defendant did indeed publish factual information.

The Plaintiff now admits that their own Docket 1 Claims are frivolous and **false**, including but not limited to: 17, 21, 37, 54, 56, and 57.

The Plaintiff admits that the Defendant indeed did publish factual information, which is useful to students. Those students that could pursue actions against AUA for disclosing their private information and the suffering they have endured at the hand of AUA for violating FERPA policies and their contractual obligations to their students.

8) The Defendant humbly requests that the Plaintiff's request for injunction be denied.

A handwritten signature in black ink, appearing to read "M. Wood". The signature is fluid and cursive, with a large, stylized initial "M" followed by "Wood".

From: Gandi (support-en@support.gandi.net)
To: steve_L_woodward@yahoo.com;
Date: Wed, September 23, 2009 10:27:26 AM
Cc:
Subject: [GANDI] AUA-VET.COM

Dear Customer,

This is an automatic confirmation for the creation of the domain you have just purchased from Gandi :

AUA-VET.COM

Your domain name has been registered without error. Notice that it will take some time (between *24 to 72 hours*) for your domain (and possibly your email and web redirections) to be fully accessible from everywhere in the world.

It is also after this delay that your domain name will appear in WHOIS with full details:

[http://www.gandi.net/whois/details?search=aua-vet.com\(=en](http://www.gandi.net/whois/details?search=aua-vet.com(=en)

To change the parameters of your domain name (nameservers, contacts, owner information, etc...) please go to our Web site:

<https://www.gandi.net/admin/domain>

If you think you have received this email in error since you have not registered this domain name, it just means that someone used your Gandi ID by mistake. We do not store credit card numbers, so if you did not request this creation, you were not debited.

Did you know? Since February 20th 2009, when you create a domain name at Gandi, you also benefit from a standard Gandi SSL certificate for one year!

Feel free to contact our Customer Care Department should you have any questions or require any additional assistance:

http://www.gandi.net/faq/contact_support

Thank you for choosing Gandi!

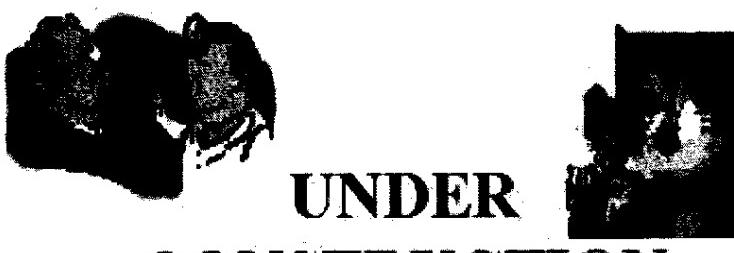
Best Regards,

EXHIBIT |

--
GANDI - <http://www.gandi.net>

Learn the truth about
**AMERICAN
UNIVERSITY of
ANTIGUA**

ENTER



**UNDER
CONSTRUCTION**

(This is not the official American University of Antigua, AUA, site.)

EXHIBIT 2

From: Steve Woodward (steve_1_woodward@yahoo.com)
To: marilyn_orem@mied.uscourts.gov; cfortney@cardellilaw.com; ebuikema@cardellilaw.com;
Date: Mon, April 19, 2010 11:59:01 PM
Cc:
Subject: AUA vs Woodward 1 - 10-cv-10978-PJD-MJH

Dear honorable Judge Duggan,

As you requested:

Youtube videos

I changed the broadcast settings on my Youtube videos to "Private"

Definition: 0 out of 25 people have access to this video.

www.aua-med.com

My web sites now state "Under Maintenance" or "Under Construction"

The subdirectories have been renamed to

"10978-directory-name"

The "index.html" files have been renamed to "10978-index.html". I then added another "index.html" file to each subdirectory that states "Under Construction", so if someone opens the directory there is just a message that states "Under Construction".

Older links (favorites or bookmarks) should not work.

This would mean that someone would have to know these paths to access the files or would have to dig farther than the average user to access these files.

I did nothing with the "log" directory, it only contains log files, nothing seen by a user.

The "tmp" directory is empty, used to store temporary files.

The yahoo_site_admin director contents are not seen by a user to the site.

www.digg.com

I "undugg" (deleted) three videos I had here.

www.metacafe.com removed 19 videos from channel

www.dailymotion.com marked all videos "private"

If the plaintiff is aware of something I've missed please contact me and I'll look into it.

Sincerely,

Steven Woodward

EXHIBIT 3

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AMERICAN UNIVERSITY OF ANTIGUA,
COLLEGE OF MEDICINE, a foreign corporation,

Plaintiff,

v

Case No.

STEVEN WOODWARD,

Defendant.

ERIC A. BUIKEMA (P58379)
Cardelli, Lanfear, & Buikema, PC
Attorneys for Plaintiff
322 W. Lincoln
Royal Oak, MI 48067
(248) 544-1100

**PLAINTIFF'S VERIFIED COMPLAINT AND EX PARTE REQUEST FOR
TEMPORARY RESTRAINING ORDER**

NOW COMES Plaintiff, American University of Antigua, College of Medicine, by and through its attorneys, CARDELLI, LANFEAR & BUIKEMA, P.C., and for its Verified Complaint and Ex Parte Request for Temporary Restraining Order, states as follows:

1. Plaintiff American University of Antigua, College of Medicine ("AUA") is an Antiguan corporation located at University Place, Antigua, West Indies.
2. Plaintiff places students in certain Michigan hospitals for clinical education and training.

EXHIBIT 4

3. Defendant Steven Woodward is a resident of Flint, Michigan who, upon last information and belief, makes his home on a sailboat in the vicinity of Flint, Michigan.

4. This action arises, in most basic summary, out of Defendant's ownership and publication of a website, and derivative publications, containing false and defamatory information about AUA, as well as private information about AUA students protected from disclosure under the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(g), and by his use of a confusingly similar domain name ("www.auamed.com") that infringes upon and/or dilutes AUA's protected trade name under Federal Statutory and common law including, but not limited to, the United States Trademark Act of 1946 (the "Lanham Act"), 15 U.S.C. § 1125(c), and the Anticybersquatting Consumer Protection Act ("ACPA"), 15 U.S.C. § 1125(d).

5. The amount in controversy exceeds \$75,000 exclusive of fees, costs or interest.

6. This court has jurisdiction over Plaintiff's Federal Statutory claims pursuant to 28 U.S.C. § 1331, and supplemental jurisdiction over Plaintiff's common law claims pursuant to 28 U.S.C. § 1337. As there exists complete diversity of citizenship amongst the parties, this court further has jurisdiction pursuant to 28 U.S.C. § 1332.

7. As the sole Defendant is a resident of this judicial district, venue is proper pursuant to 28 U.S.C. § 1391.

GENERAL ALLEGATIONS

8. AUA is a foreign medical school catering, in part, to students from the United States including Michigan.

9. AUA regularly places and directs students in clinical education in association with Michigan hospitals.

10. Defendant Steven Woodward is a former student of AUA.

11. As a result of misconduct, Defendant was discharged from AUA without completion of his degree.

12. That is, Defendant is a disgruntled former student of AUA.

13. As a result of his dismissal from the University, Defendant initiated a lawsuit against AUA and its educational partner hospital Trinity-Health Michigan's St. Joseph Mercy Hospital in Pontiac, Michigan.

14. The lawsuit was filed in the Oakland County Circuit Court on or about December 20, 2007, where it was known as Case No. 07-088103-CZ and assigned to the Honorable Shalina Kumar.

15. In the suit, Mr. Woodward alleged that AUA and/or Trinity slandered him, intentionally inflicted emotional distress, tortiously interfered with a contractual relationship, invaded a right to privacy and breached a contract.

16. The court concluded that Mr. Woodward's allegations were baseless and granted AUA summary disposition of the same on June 30, 2008. The court similarly granted summary disposition to Trinity on April 29, 2009 finding, on the merits, that the claimed defamatory remarks as to Woodward's misconduct were actually, in fact, true.

17. As a result of Mr. Woodward's apparent dissatisfaction with this result and with everyone and everything other than the party truly responsible for his circumstance (himself), he has now registered an internet domain name of www.auamed.com at which he publishes reckless, false, and malicious purported "facts" about AUA in addition to other objectionable content.

18. A specific date when Mr. Woodward commenced his endeavor is not known but it is well after AUA's first usage in trade of its own similar name and website www.auamed.org.

19. A copy of the legitimate www.auamed.org website homepage is attached as Exhibit 1.

20. A copy of Defendant's www.aua-med.com website homepage is attached as Exhibit 2.

21. Defendant's website represents, alleges and publishes, as if true, false and defamatory information about AUA including, by way of example and not limitation, that:

- a. AUA routinely commits fraud upon its students;
- b. AUA falsifies its students grades;
- c. AUA breaches contracts;
- d. AUA disregards student civil rights;
- e. AUA conspires against its students;
- f. AUA pursues unspecified and other unethical practices;
- g. AUA has "malicious intentions" and administration and academic advisors of a "heinous nature";

- h. AUA students are sexually assaulted;
- i. AUA professors teach students wrong information;
- j. AUA conspires to commit fraud and violations of civil rights;
- k. AUA commits criminal activities reportable to the FBI;
- l. AUA student pass rate for USMLE medical board exams is only 22.9%;
- m. AUA contrives false evidence in student disciplinary proceedings (i.e., the hearing Mr. Woodward was provided prior to dismissal and refused to even attend);
- n. AUA colluded with St. Joseph Hospital to maliciously end Mr. Woodward's career, conspired, abused its power, committed perjury and is otherwise immoral and unethical;
- o. AUA agents are liars;
- p. The locality of AUA is full of "rape, murder, fraud, and government corruption."

22. Defendant's website further publishes, in a manner not repeated here, and without consent of the university or its affected students, other students' identities and personal information including grades and academic information.

22. In that Plaintiff utilizes its own website to market and provide useful information to prospective students, AUA suffers irreparable injury and harm to its reputation each day that Mr. Woodward's appalling site is permitted to remain available.

23. Moreover, irreparable injury to AUA and its affected students occurs, for which there is not an adequate remedy at law, by virtue of Mr. Woodward's unsanctioned and unauthorized publication of federally protected private academic information.

24. Consequently, AUA respectfully requests an immediate, but temporary (until such time as opportunity for hearing can be afforded) restraining order prohibiting further publication of this offending information by any means and further prohibiting use, of any kind, of the confusingly similar domain name.

25. Pursuant to FRCP 65(b)(1), AUA seeks temporary restraining order relief on an immediate and ex parte basis because, as demonstrated by this verified complaint, irreparable injury is occurring and will continue to occur and because Mr. Woodward cannot be located for purpose of immediate service. Undersigned counsel has made reasonable and diligent search of the prior lawsuit file and record, including the deposition of Mr. Woodward, which reveals, solely, that he resides on a movable sailboat and utilizes his sister's Flint address as a mailing address.

26. A proposed temporary restraining order is appended as Exhibit 3.

COUNT I- FEDERAL TRADEMARK/TRADENAME INFRINGEMENT

27. Plaintiff incorporates and restates its answers to paragraphs 1 through 26 above.

28. Defendant publishes information under a domain name of www.auamed.com.

29. Plaintiff has published legitimate information about its educational institution under the domain name www.auamed.org and has otherwise utilized the root term "auamed" in trade since long before Defendant first utilized the above referenced domain name.

30. Defendant's use of the confusingly similar name, and resultant accessibility by any consumer utilizing common search terms employed to glean

legitimate information about the University is likely to cause confusion as to whether the Defendant's website is somehow endorsed, sponsored, licensed or affiliated with the AUA.

31. Defendant's actions, along with the use on the offending website of information purportedly from, sponsored or published by AUA (including items bearing the AUA logo) constitute willful infringement upon AUA's exclusive rights in its tradename and trademarks under 15 U.S.C. § 1114.

32. Defendant's use of the similar domain name, including copies, reproductions and/or counterfeits of the AUA logo on the site itself has been, and continues to be done with the intent to cause confusion, mistake and harm as to the source or sponsorship of the information disseminated.

33. As a direct and proximate result, AUA has suffered irreparable harm to its protected tradename and trademarks.

34. AUA has no adequate remedy at law that will compensate it for the continued harm it will suffer if Defendant's acts are allowed to continue.

35. AUA has gained a reputation as a well respected educational institution and there is an association of its tradename and marks with this reputation.

36. Defendant has utilized that name and the marks with the intention of maliciously attacking that reputation and goodwill to satisfy some misguided personal vendetta against the University.

37. Defendant publishes false information in conjunction with the tradename and marks that dilutes, blurs and tarnishes the distinctiveness and positive association of the same.

38. Accordingly, this is an exceptional case within the meaning of the Lanham Act.

39. In addition to the temporary relief prayed for elsewhere in this verified complaint AUA respectfully requests permanent injunction as well as all rights, remedies and damages available at law including but not limited to treble damages and attorney fees.

WHEREFORE, Plaintiff American University of Antigua, respectfully requests a judgment against Defendant, together with costs, interest, and attorney fees.

COUNT II- INFRINGEMENT UNDER THE ACPA

40. Plaintiff incorporates and restates its answers to paragraphs 1 through 39 above.

41. Defendant has registered, in bad faith and with intent to profit, a domain name confusingly similar to that utilized by AUA in the course of its business.

42. The AUA domain is distinctive and has been utilized in trade (as has its root tradename ("AUAMED") since long before Defendant's offending registration and use of www.aua-med.com.

43. The AUA tradename and domain name are widely recognized by the general consuming public as a designation of services and source of same from AUA.

44. Defendant's conduct is not a fair usage.

45. Defendant has attempted to profit from the use of this site directly and by leveraging the same in the prior litigation in which he was a plaintiff.

WHEREFORE, Plaintiff American University of Antigua, respectfully requests a judgment against Defendant, together with costs, interest, and attorney fees.

COUNT III- WILLFUL VIOLATION OF FERPA

46. Plaintiff incorporates and restates its answers to paragraphs 1 through 45 above.

47. Defendant has published private educational information about other students including names and grades on his website.

48. This publication is without the consent of the University or its affected students and is otherwise unauthorized.

49. The academic records are otherwise private and are protected from public disclosure under federal law.

50. The consequence of disclosure has an immediate and obvious impact on the affected students' privacy rights for which there is no adequate remedy at law.

51. Further, as a direct and proximate result of Defendant's actions, AUA could lose significant access to federal educational funding and student aid.

WHEREFORE, Plaintiff American University of Antigua, respectfully requests a judgment against Defendant, together with costs, interest, and attorney fees.

COUNT IV- DEFAMATION

52. Plaintiff incorporates and restates its answers to paragraphs 1 through 51 above.

53. Defendant publishes a website in which he intentionally, maliciously and/or recklessly or negligently publishes falsehoods about AUA.

54. By use of direct words, narrated video clips, weblinks and "YOUTUBE" videos of his making, Defendant promulgates as if true the following "facts" about AUA:

a. AUA routinely commits fraud upon its students;

- b. AUA falsifies its students grades;
 - c. AUA breaches contracts;
 - d. AUA disregards student civil rights;
 - e. AUA conspires against its students;
 - f. AUA pursues unspecified and other unethical practices;
 - g. AUA has “malicious intentions” and administration and academic advisors of a “heinous nature”;
 - h. AUA students are sexually assaulted;
 - i. AUA professors teach students wrong information;
 - j. AUA conspires to commit fraud and violations of civil rights;
 - k. AUA commits criminal activities reportable to the FBI;
 - l. AUA student pass rate for USMLE medical board exams is only 22.9%;
 - m. AUA contrives false evidence in student disciplinary proceedings (i.e., the hearing Mr. Woodward was provided prior to dismissal and refused to even attend);
 - n. AUA colluded with St. Joseph Hospital to maliciously end Mr. Woodward’s career, conspired, abused its power, committed perjury and is otherwise immoral and unethical;
 - o. AUA agents are liars;
 - p. The locality of AUA is full of “rape, murder, fraud, and government corruption.”
55. Each and every one of these “facts” is false.

56. Defendant knew at the time of publication, or reasonably should have known, that each of his representations was false.

57. The publication of these purported "facts" about AUA is misleading, damaging and in certain circumstances per se actionable inasmuch as they allege criminal activity or the like.

58. AUA has suffered damages to its reputation as a direct and proximate result of Defendant's actions.

WHEREFORE, Plaintiff American University of Antigua, respectfully requests a judgment against Defendant, together with costs, interest, and attorney fees.

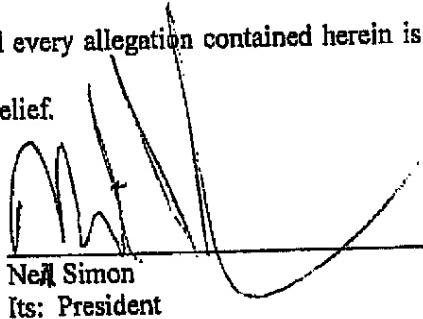
Respectfully submitted,

/s/ Eric A. Buikema
Cardelli, Lanfear, & Buikema, P.C.
322 West Lincoln Avenue
Royal Oak, MI 48067-2505
(248) 544-1100/(248) 544-1191(fax)
ebuikema@cardellilaw.com
(P58379)

DATED: March 9, 2010

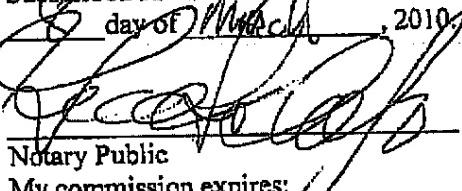
Being First duly sworn:

I, Neil Simon, am an officer of the American University of Antigua and its general counsel. I have personal knowledge of the facts set forth in this complaint and, having read the same, I hereby attest that each and every allegation contained herein is true to the best of my knowledge, information and belief.



Neil Simon
Its: President

Subscribed and sworn to before me this
day of March, 2010



Notary Public

My commission expires:

LEONARD A. SCLAFFANI
Notary Public, State of New York
No. 025C6120579
Qualified in Westchester County
Commission Expires December 20, 2010



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The truth about American University of Antigua - Mozilla Firefox

http://www.aua-med.com/

Most Visited Getting Started Latest Headlines Customizable Links Free Hotmail Free Hotmail RealPlayer Windows Marketplace Windows Media Windows

WEB SEARCH

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A screenshot of a Mozilla Firefox browser window. The address bar shows the URL 'http://www.aub-med.com/'. The main content area displays a search result page with the title 'The truth about American University...'. The page includes several links such as 'Most Visited', 'Getting Started', 'Latest Headlines', 'Customize Links', 'Free Hotmail', 'RealPlayer', 'Windows Marketplace', 'Windows Media', and 'Windows'. At the bottom of the page, there is a circular logo for 'The Least' featuring a shield with the text 'Student Rights'.

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